

48A C.J.S. Judges § 116

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

V. Discipline, Suspension, or Removal

C. Grounds

§ 116. Willful misconduct relating to official duty

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges 11\(4\)](#)

"Willful misconduct" leading to the discipline of a judge may require unjudicial conduct, committed in bad faith, by a judge acting in his or her judicial capacity.

Misconduct of a judge leading to disciplinary action against him or her require the element of willfulness.¹

Willful misconduct is the improper or wrongful use of the power of his office by a judge acting intentionally or with gross unconcern for his conduct and generally in bad faith.² A judge's alleged misconduct is committed in "bad faith," if the judge intentionally commits acts which he or she knows or should know are beyond his or her lawful power or acts within the lawful power of the judge which nevertheless are committed for any purpose other than the faithful discharge of judicial duties.³ Willful misconduct occurs when the actor knows he or she is violating a judicial canon or rule of professional conduct and acts contrary to that canon or rule in spite of such knowledge.⁴ It is more than a mere error of judgment or an act of negligence⁵ and, though encompassing conduct involving moral turpitude, dishonesty, or corruption, does not necessarily require the presence of such elements.⁶ Conduct in excess of clearly defined limits of a judge's authority may amount to misconduct requiring the disciplinary action be taken,⁷ as well at the persistent commission of the same error demonstrating willful misconduct.⁸

A judge is acting in his or her "judicial capacity" as required to constitute willful misconduct warranting censure when the judge is performing one of his or her judicial functions, that is, one of the varied functions generally associated with his or her position as a judge, whether adjudicative or administrative in nature.⁹

Financial disclosure.

Disciplinary action against a judge for failure to timely file an annual personal financial disclosure statement as required under a financial disclosure law must be based on a willful and knowing disobedience of the rule rather than a case of mere neglect.¹⁰ The failure of a judge to timely file an annual personal financial disclosure statement is "willful and knowing" where he or she acts in bad faith or makes a purposeful choice not to do so in order to obtain some personal or professional gain.¹¹ The "gain" need not be monetary, but may be anything from a desire not to disclose one's personal assets to the public, to a desire not to take the time, trouble, and effort to complete the form with knowledge that it is required to be filed by a certain date.¹²

CUMULATIVE SUPPLEMENT

Cases:

Violations of Code of Judicial Conduct are willful, and thus constitute judicial misconduct, when judicial officer's conduct was not result of duress and when judicial officer knew or should have known that conduct was prohibited by Code of Judicial Conduct. Wis. Stats. § 757.81(4)(a); Wis. Sup. Ct. R. 60.01 et seq. [Matter of Disciplinary Proceedings Against Gorski, 2020 WI 5, 937 N.W.2d 609 \(Wis. 2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 Miss.—[Mississippi Com'n on Judicial Performance v. Bishop, 761 So. 2d 195 \(Miss. 2000\)](#).
N.J.—[In re Williams, 169 N.J. 264, 777 A.2d 323 \(2001\)](#).
N.C.—[In re Belk, 364 N.C. 114, 691 S.E.2d 685 \(2010\)](#).
2 Ga.—[Matter of Inquiry Concerning a Judge No. 94-70, 265 Ga. 326, 454 S.E.2d 780 \(1995\)](#).
Miss.—[Mississippi Com'n on Judicial Performance v. Skinner, 119 So. 3d 294 \(Miss. 2013\)](#).
N.M.—[In re Schwartz, 2011-NMSC-019, 149 N.M. 721, 255 P.3d 299 \(2011\)](#).
Wis.—[In re Judicial Disciplinary Proceedings Against Zodrow, 2010 WI 107, 329 Wis. 2d 53, 787 N.W.2d 815 \(2010\)](#).

Elements of willful misconduct in office

"Willful misconduct in office," for purposes of a judicial disciplinary proceeding, has two elements: the judge's misconduct must be willful, that is, done with malice or in bad faith, and it must be committed in office, that is, while acting in a judicial capacity.

Cal.—[Adams v. Commission on Judicial Performance, 10 Cal. 4th 866, 42 Cal. Rptr. 2d 606, 897 P.2d 544 \(1995\)](#).

- 3 Ark.—[Arkansas Judicial Discipline and Disciplinary Com'n v. Simes, 2011 Ark. 193, 381 S.W.3d 764 \(2011\)](#).
Cal.—[Dodds v. Commission on Judicial Performance, 12 Cal. 4th 163, 48 Cal. Rptr. 2d 106, 906 P.2d 1260 \(1995\)](#).

Wis.—[In re Judicial Disciplinary Proceedings Against Zodrow](#), 2010 WI 107, 329 Wis. 2d 53, 787 N.W.2d 815 (2010).

Intent

A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority constitutes bad faith.

Miss.—[Mississippi Com'n on Judicial Performance v. Skinner](#), 119 So. 3d 294 (Miss. 2013).

4 Miss.—[Mississippi Com'n on Judicial Performance v. Buffington](#), 55 So. 3d 167 (Miss. 2011).

Nev.—[In re Fine](#), 116 Nev. 1001, 13 P.3d 400 (2000).

5 U.S.—[In re Judicial Misconduct](#), 726 F.3d 1060 (9th Cir. 2013).

N.M.—[In re Schwartz](#), 2011-NMSC-019, 149 N.M. 721, 255 P.3d 299 (2011).

6 N.C.—[In re Nowell](#), 293 N.C. 235, 237 S.E.2d 246 (1977).

7 Miss.—[Mississippi Com'n on Judicial Performance v. Thompson](#), 80 So. 3d 86 (Miss. 2012).

8 Miss.—[Mississippi Com'n on Judicial Performance v. Thompson](#), 80 So. 3d 86 (Miss. 2012).

Utah—[In re Worthen](#), 926 P.2d 853 (Utah 1996).

Wis.—[In re Judicial Disciplinary Proceedings Against Zodrow](#), 2010 WI 107, 329 Wis. 2d 53, 787 N.W.2d 815 (2010).

9 **On the bench or in chambers**

A judge is presumptively acting in a judicial capacity when the judge is on the bench or in chambers during normal working hours.

Cal.—[Dodds v. Commission on Judicial Performance](#), 12 Cal. 4th 163, 48 Cal. Rptr. 2d 106, 906 P.2d 1260 (1995).

10 La.—[In re Myers](#), 74 So. 3d 672 (La. 2011).

11 La.—[In re Myers](#), 74 So. 3d 672 (La. 2011).

12 La.—[In re Myers](#), 74 So. 3d 672 (La. 2011).